UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

CHERI ANN HUTSON,

Plaintiff,

v. Case No. 2:15-cv-02411-STA-cgc

FEDERAL EXPRESS CORPORATION,

Defendant.

MOTION FOR NEW TRIAL

Comes now Plaintiff Cheri Ann Hutson ("Plaintiff"), pursuant to Rule 59 of the Federal Rules of Civil Procedure, and respectfully moves for a new trial.

INTRODUCTION

The facts of this case are well known to the Court. Plaintiff, Cheri Ann Hutson, is employed by FedEx as a Senior Manager in the Feeder Aircraft Operations department and has worked for FedEx since 1982 in a variety of positions. In July 2013, Ms. applied for a GOC Senior Manager position. On September 5, 2013, after interviewing for the GOC Senior Manager position, Ms. Hutson was informed by Paul Tronsor that her qualifications did not meet the needs of the position. Bobby Dunavant was selected for the position, despite the fact that he was objectively less qualified for the position. Importantly, at the time Ms. Hutson applied for the GOC Senior Manager position, there were no female managers or senior managers in the Memphis GOC. Defendant contends that Ms. Hutson failed the interview conducted by Mr. Tronsor, Bobbi Wells and Chris Frazier, but that Mr. Dunavant passed the interview, scored the highest and was, therefore, selected.

Throughout the course of this litigation, Plaintiff has asserted that the interview process was highly subjective and that Mr. Tronsor influenced the hiring panel and hiring process. For example, at trial, Plaintiff presented evidence that there were several errors in the prescreening qualifications grids resulting in both Jay Leone and Mr. Dunavant being granted interviews when, in reality, they did not meet the qualifications. Plaintiff also presented evidence regarding Defendant's affirmative action policies and underutilization data for female Senior Managers in the GOC department.

Ultimately, the Court excluded relevant evidence regarding affirmative action, underutilization of women in GOC and Mr. Tronsor's influence over the hiring process, thus highly prejudicing Plaintiff. At the conclusion of trial, the jury entered a verdict in favor of Defendant.

PROCEDURAL BACKGROUND

In this case, a jury trial was held on February 6, 2017, with Honorable Judge S. Thomas Anderson presiding. Prior to the trial, Defendant filed a number of motions *in limine*. (Docs. 80-86). The motions *in limine* pertinent to Plaintiff's motion for new trial are: Defendant's Second Motion in Limine to Exclude the Testimony of Certain Non-Party Witnesses and Defendant's Fifth Motion in Limine to Exclude Evidence Related to a Purported "History and Pattern" of Excluding Women in Management. (Docs. 81, 82 and 84).

On February 1, 2017, the Court entered an Omnibus Order on Motions in Limine. (Doc. 99). With regard to Defendant's Second Motion in Limine (Doc. 81), the Court reserved ruling on the admissibility of the specific testimony to be offered by Ronda Doyle at trial. (Doc. 99 at p. 5). The Court granted Defendant's Fifth Motion in Limine regarding the admissibility of "pattern and practice" evidence. (Doc. 99 at p. 6-9). Specifically, Defendant's sought to exclude statistical information about the number of women who applied for GOC Manager and Senior Manager positions since the 1980s. (Doc. 84-1 at p. 2). This evidence included statistics about the number of male and female applicants for approximately ten (10) GOC management positions from 2000 to 2015 and whether a male or female candidate was hired. (Doc. 84-1 at p. 2). Defendant's motion did not seek to exclude the MGRAAP data or underutilization data for the 2013 GOC Senior Manager position – the position at issue in this case.

At trial, the Court made several evidentiary rulings excluding testimony and evidence related to the issues initially raised in the motions in limine. For each of the reasons discussed below, Plaintiff is entitled to a new trial.

ARGUMENT

A. Legal Standard

Rule 59 of the Federal Rules of Civil Procedure authorizes this Court to grant a new trial "for any reason for which a new trial has heretofore been granted in an action at law in federal court." Fed. R. Civ. P. 59(a)(1)(A). It is within the Court's discretion to grant or deny a motion for a new trial under Rule 59. Davis v. Jellico Cmty. Hosp., Inc., 912 F.2d 129, 132 (6th Cir. 1990). "The governing principle in the Court's acting on a motion for new trial is whether, in the judgment of the trial judge, such course is required in order to prevent an injustice; and where an injustice will otherwise result, the trial judge has the duty as well as the power to order a new trial." Davis, 912 F.2d at 133 (citing Kilgore v. Greyhound Corp., 30 F.R.D. 385, 387 (E.D. Tenn. 1962)).

While Rule 59 does not specify the grounds for granting a new trial, courts have determined that a new trial is warranted when a jury has reached a "seriously erroneous result," as evidenced by: (1) the verdict being against the weight of the evidence; (2) the damages being excessive; or (3) the trial being unfair to the moving party in some fashion, i.e. the proceedings being influenced by prejudice or bias. Holmes v. City of Massillon, 78 F.3d 1041, 1045-46 (6th Cir. 1996). The Court also has the discretion to consider other grounds, "raising questions of law arising out of substantial errors in admission or rejection of evidence or instructions to the jury." Bourgeois v. Strawn, 501 F. Supp. 2d 978, 985 (E.D. Mich. 2007) (citing Montgomery Ward & Co. v. Duncan, 311 U.S. 243, 251 (1940)).

In this case, there were a number of evidentiary rulings limiting the testimony of Plaintiff's witnesses as well as the documents introduced by Plaintiff at trial. "Evidentiary rulings are left to the discretion of the trial judge." In re Air Crash Disaster, 86 F.3d 498, 526 (6th Cir. 1996). An evidentiary ruling will not be reversed absent a showing of actual prejudice, and "[t]here is no prejudice from the wrongful exclusion of evidence if other substantially equivalent evidence of the same facts was admitted into evidence. Nor is there prejudice if the absence of the evidence had no effect on the final result of the trial." Id. (citations omitted).

B. Exclusion of MGRAAP Underutilization Data

The Court's exclusion of data related to GOC managers in the Manager Affirmative Action Plan ("MGRAAP") underutilization screen was highly prejudicial to Plaintiff and prevented the jury from hearing relevant information related to a critical step in the hiring process. The MGRAAP screen (Tr. at Exhibit 71) showed the underutilization of female managers and senior managers, as well as analysts, assistants, and other jobs in GOC. The data presented on this screen, which captures the demographics for the entire GOC department at the time Bobby Dunavant was hired for the 2013 GOC Senior Manager position, is one of the factors to be considered by the hiring director "before recruiting to determine affirmative action hiring needs." (Tr. at 81:2-7, Exh. 70).[1] While the demographic composition of the GOC Senior Managers for 2013 was permitted, the Court excluded critical data regarding the demographics of GOC *Managers* after Plaintiff was rejected for the 2013 GOC Senior Manager position on Exhibit 71, the MGRAAP underutilization screen from November 6, 2013.

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[1] Citations to the trial transcript refer to the official transcript filed with the Court on February 28, 2017. (Doc. 119). If the Court prefers, Plaintiff can file excerpts of the trial transcript relevant to this motion in a separate docket entry.

At trial, Chris Frazier testified that during the 2013 GOC Senior Manager hiring process, the process at issue in this case, Mr. Tronsor would have seen the MGRAAP screen indicating an underutilization of female managers and female senior managers. (Tr. at 82:21-83:6). There was also testimony about Defendant's affirmative action policies and goals, including the duty of hiring managers to review the MGRAAP screen to ensure they are meeting affirmative action goals. (Tr. at 77:6-19, 79:14-83:6, Exh. 70).[2] As the hiring director for the 2013 GOC Senior Manager position, Mr. Tronsor was required to review the MGRAAP screen for a summary of all of GOC, which, in this case, indicated a lack of females in manager positions. (Tr. at 82:3-5,82:17-83:1). Moreover, from start of trial, Defendant submitted that "FedEx hires from within" as an explanation behind GOC's internal job posting and hiring process. The MGRAAP data of both senior managers and managers is highly relevant to explain the demographics of the hiring pool, since current GOC managers are within the pool of candidates for GOC Senior Managers job postings.

The Court excluded the line of data concerning GOC Managers because it had potential to confuse the jury and because "the question for this jury is was [Plaintiff] discriminated against in this instance, not whether there were other people who could have applied or there were fewer or no women in the *manager's* position." (emphasis added) (Tr. at 131:9-18). However, the exclusion of this data on these grounds prevented the jury from hearing any relevant contextual information and ignores critical steps in the hiring process. As stated repeatedly by Defendant

[2] As of the date of filing this motion, the second half of the transcript has not yet been filed. When it is filed and Plaintiff receives a copy, Plaintiff will supplement this motion with relevant portions of the remaining testimony.

throughout trial, the job posting was "internal," and exclusion of this particular data prevented Plaintiff from providing relevant contextual information as to why the position is "internal," who the "internal" candidates are and who, ultimately, Plaintiff was competing with for the 2013 Senior Manager position.

The miniscule (or nonexistent) number of females in GOC management positions, Mr. Tronsor's knowledge of this issue, FedEx's affirmative action policies designed to rectify the underutilization of women, Mr. Tronsor's duty to confirm the underutilization data as the 2013 GOC Senior Manager hiring manager and the perpetuation of the underutilization of women in the department with the failure to hire Plaintiff are all relevant, circumstantial evidence that Mr. Tronsor intended to discriminate against Plaintiff. Plaintiff respectfully submits that the exclusion of this evidence was prejudicial to Plaintiff and allowed Defendant to present evidence regarding the internal hiring process that essentially went unrefuted as a result of the Court's exclusion of relevant contextual information regarding the composition of the probable GOC Senior Manager hiring pool and Defendant's failure to consider the underutilization of women in management in the GOC department. As Plaintiff did not have an opportunity to fully demonstrate to the jury all of the circumstantial evidence regarding Mr. Tronsor's intent to discriminate against Plaintiff or the full context or consequence of critical steps in the internal hiring process, Plaintiff is entitled to a new trial.

C. Exclusion of Ronda Doyle's Testimony

Plaintiff also did not have an opportunity to fully demonstrate to the jury Mr. Tronsor's influence on the hiring process, candidates or hiring decisions, as a result of the Court's exclusion of a majority of Ronda Doyle's testimony. Following a proffer of the testimony of Ronda Doyle, the Court excluded a significant portion of her testimony in large part due to the fact that she has no knowledge of the "SMSS" process. (Tr. at 155:2-5). In fact, the 2013 GOC Senior Manager hiring process was the first time Paul Tronsor had used the SMSS system to select a senior manager. (Tr. at 169:21-170:1).Consequently, the jury was not permitted to hear testimony regarding any hiring process in which Ms. Doyle participated when she was supervised by Mr. Tronsor , despite the similarities between past hiring processes and the "SMSS" process at issue, nor was the jury permitted to hear testimony regarding Mr. Tronsor's influence over the hiring process, including certain comments about candidates.

Significantly, in the Court's Order Granting in Part, Denying in Part Defendant's Motion for Summary Judgment, the Court notes in footnote 10, "While not all of the statements found in Doyle's declaration appear to be admissible, **Doyle's statement concerning the interview process utilized in the GOC are admissible and relevant**." (emphasis added) (Doc. 76 at n. 10). Despite the Court's previous Order, at trial, the scope of Ms. Doyle's testimony was essentially limited to comments made by Mr. Tronsor about Ms. Hutson.

During the proffer of Ms. Doyle's testimony, she described the hiring process: post the position; applicants submit Job Change Applications ("JCA"s); build a grid; set interviews; select interview questions; conduct panel interviews; individually score interview answers on a scale from 1 to 5; and engage in discussion and consensus scoring of the applicant after a discussion with the hiring panel. (Tr. at 136:21-139:5). The fundamental hiring process described by Ms. Doyle is identical to the process dubbed "SMSS" by Defendant and described by multiple witnesses (i.e. Chris Frazier, Paul Tronsor, and Bobbi Wells). Exhibit 54, FedEx Policy 4-70 "Management Selection/AiM/SMSS" makes it clear that SMSS, the hiring/interview process for Senior Managers, and AiM, the hiring/interview process for front-line managers, fall under the same policy and procedures. (Tr. at Exh. 54). Over Plaintiff's objection, the Court excluded any testimony regarding the hiring/interview process and Mr. Tronsor's influence over the hiring process because Ms. Doyle had not participated in the ***"SMSS"*** hiring process, although she had hired several managers in GOC using a procedurally identical process.

Additionally, the Court specifically excluded any testimony regarding comments made by Mr. Tronsor to Ms. Doyle in an attempt to influence her hiring decision, including the hiring of Debi Minnick into GOC. Among several other examples of Mr. Tronsor making comments about GOC candidates, Ms. Doyle testified that she participated in the hiring of Ms. Minnick, and Mr. Tronsor suggested that Ms. Doyle hire her because "she's cute." (Tr. at 143:9-23). In excluding this area of testimony, the Court stated:

> Apparently the comment was, **but she's cute**. You said you didn't think she was ready, and he said, **but she's cute**. Maybe an inappropriate comment, but I don't think it evidences any kind of discrimination…I think it does have the potential to confuse the jury. I don't see anything at this point from which the jury could conclude that this supports or indicates that there was discrimination in this case.

(emphasis added) (Tr. at 157:21-158:8). The comment about Debi Minnick is clearly related to her gender as Mr. Tronsor never suggested hiring any male candidates based on whether or not he considered them to be "cute." Thus, this testimony was relevant in demonstrating that gender plays a role in Mr. Tronsor's hiring decisions and to show his discriminatory intent with regard to Plaintiff.

Throughout the course of litigation, Defendant's have contended that the interview/hiring process in GOC is objective and that all candidates, both male and female, were treated the same under the interview/hiring policies and process. The Court's exclusion of Ms. Doyle's testimony essentially prevented Plaintiff from disputing this by excluding any testimony about how Mr. Tronsor had influenced previous GOC hirings, significantly prejudicing Plaintiff, since no other equivalent evidence of the same facts were admitted into evidence. Accordingly, Plaintiff is entitled to a new trial.

CONCLUSION

Based on the foregoing, Plaintiff respectfully requests that the Court enter an order granting a new trial.

Respectfully submitted,

/s/Donald A. Donati

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing document has been served via the Court's ECF system on Mr. Joseph B. Reafsnyder, attorney for Defendant, Federal Express Corporation, 3620 Hacks Cross Road, Memphis, TN 38125, March 6, 2017.

/s/Donald A. Donati